No. Cr. 66-360.

In the United States District Court

FOR THE NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM THOMAS
and
LENORE JACKSON,

Defendants.

RELEVANT DOCKET ENTRIES.

11-16-66. Indictment filed.

2-12-68. Motion of Defendant Thomas to advance for immediate trial filed.

2-12-68. Motion of Defendant Thomas to suppress and for return of illegally seized evidence, with Memorandum in Support filed.

4-3-68. Order Dismissing Indictment Against Defendants Thomas and Jackson filed.

4-8-68. Motion of Defendant to vacate order of dismissal filed.

6-2-68. Endorsed ruling overruling Motion of Defendant Thomas to vacate Order of Dismissal filed.

7-2-68. Order overruling Motion of Defendant Thomas to vacate order of dismissal filed.

2-18-19. Order of the Court of Appeals dismissing appeal.

COMPLAINT FOR VIOLATION OF U. S. C. TITLE 26, SECTION 4744(a).

(Dated April 21, 1966.)

Before Clifford E. Bruce, Federal Building, Cleveland, Ohio.

The undersigned complainant being duly sworn states:

That on or about April 20, 1966, at Cleveland, Ohio in the Northern District of Ohio, Eastern Division, William Thomas did unlawfully acquire marihuana without having paid the transfer tax as required by the Internal Revenue Code of 1954 in violation of Section 4744(a), Title 26, U.S.C.;

And the complainant states that this complaint is based on information furnished the undersigned, Agent James S. Hilbert, U. S. Bureau of Narcotics, by Cleveland Police Department Narcotic Squad Detectives, reliable informants of the Federal Bureau of Narcotics, and agents of the U. S. Bureau of Narcotics, Chicago, Illinois.

And the complainant further states that he believes that Agents Irvin C. Swank and Jack L. Lloyd, U. S. Bureau of Narcotics; Cleveland Police Department, Narcotic Squad Detectives James Veres, Walter Parhamovich and Lawrence J. Masek are material witnesses in relation to this charge.

JAMES S. HILBERT,
Agent, U. S. Bureau of Narcotics.

Sworn to before me, and subscribed in my presence, April 21, 1966.

CLIFFORD E. BRUCE,
United States Commissioner.

WARRANT OF ARREST.

(Dated April 21, 1966.)

To Irvin C. Swank or Any Officer of the Federal Bureau of Narcotics:

You are hereby commanded to arrest William Thomas, and bring him forthwith before the nearest available United States Commissioner to answer to a complaint charging him with acquiring marihuana without having paid the transfer tax required by the Internal Revenue Code of 1954 in violation of U.S.C. Title 26, Section 4744(a).

CLIFFORD E. BRUCE,
United States Commissioner.

INDICTMENT.

(Filed November 16, 1966.)

The Grand Jury charges:

On April 21, 1966, in the Eastern Division of the Northern District of Ohio, to wit, Cleveland, Ohio, William Thomas did unlawfully have in his possession a quantity of marihuana, and failed to produce for Agents of the Federal Bureau of Narcotics an official written order form, in Cleveland, Ohio; in violation of Title 26, Section 4744(a), U.S.C.

COUNT II.

And the Grand Jury further charges:

On April 20, 1966, in the Eastern Division of the Northern District of Ohio, to wit, Cleveland, Ohio, William Thomas did unlawfully transfer a quantity of marihuana to Lenore Jackson of Chicago, Illinois, not pursuant to an official order form, by mail, from Cleveland, Ohio, to Chicago, Illinois; in violation of Title 26, Section 4742(a), U.S.C.

COUNT III.

And the Grand Jury further charges:

On April 21, 1966, in the Eastern Division of the Northern District of Ohio, to wit, Cleveland, Ohio, Lenore Jackson did unlawfully have in her possession a quantity of marihuana, and failed to produce for Agents of the Federal Bureau of Narcotics an official written order form, in Cleveland, Ohio; in violation of Title 26, Section 4744(a), U.S.C.

MOTION TO SUPPRESS AND FOR RETURN OF ILLEGALLY ACQUIRED PROPERTY.

(Filed February 12, 1968.)

Comes now the Defendant, William Thomas, by and through counsel, and respectfully moves this Court pursuant to Rule 41(e) *Federal Rules of Criminal Procedure,* to suppress and to return to the Defendant certain property—seized by agents of the Federal Narcotics Bureau and others in privity with them (including various members of the Cleveland Police and agents of the United States Post Office, whose true names are unknown)—which property it is contended herein was seized either as evidence, or as property forfeited to the government. In support thereof, the Defendant avers as follows:

I.

(a) That on or about April 21, 1966, he was arrested by agents of the Bureau of Narcotics ostensibly on the basis of an arrest warrant (See Appendix A) charging him with an alleged violation of the Federal Narcotic Control Act.

(b) That this warrant not only was defective because it was based on a complaint that merely set forth conclusory allegation, insufficient to establish the requisite probable cause. The same was based

in part on evidence that had been illegally acquired in the following manner—that is, on April 21, 1966, officers of the Cleveland Police Department, illegally and without probable cause, stopped, arrested and detained the defendant who was then a motorist proceeding lawfully along a public roadway. That the purpose behind their doing this was to allow these officers to illegally search and inspect the defendant as well as the contents of his car—which was done.

(c) That incident to the above described illegal activity, these officers learned and determined the addressee on a package the defendant had in his car, which package was subsequently mailed to Chicago.

(d) That either in Chicago, or in Cleveland, it is alleged, upon information and belief, that, in violation of Part 113 of the Postal Manual (1961), this package was opened and inspected, before being forwarded to the indicated address, where the same was seized in violation of the prohibition against illegal searches and seizures.

II.

Defendant further says that in executing the arrest warrant, these officers, in violation of rights guaranteed him under the Fourth and Fifth Amendments of the constitution, grossly exceeded the bounds of reasonableness in conducting any incidental search that may have otherwise been authorized. In this regard, it is averred:

(a) That for purposes of facilitating their desire to conduct a general and exploratory search of premises described as 1621 East 91st, where the arrest was made, these officers purposefully delayed making any effort to execute their "warrant" until they knew, as a fact, the Defendant was inside.

(b) That although the Defendant was told by the agents that he was under arrest (for having sent narcotics through the mail at a previous time) which

could only authorize an incidental search for weapons, the entire premises were searched and certain property seized as evidence.

(c) That subsequent to this search, the Defendant's car was seized, based on information illegally acquired in the fashion delineated above, which seizure violated rights guaranteed him by the constitution.

(d) That following the disclosure of the presence in this apartment of property later seized as evidence, these agents, in flagrant violation of Rule 5, *Federal Rules of Criminal Procedure,* and in open disregard of the rules crystallized in *Miranda v. Arizona,* 384 U. S. 436, prevailed upon the Defendant to sign a consent to search other fixed premises located in another section of the City, which search also yielded property that was seized incident thereto either as evidence or contraband.

Defendant further says that the United States Attorney intends to use this evidence so unlawfully seized against this defendant on the trial of this cause, and as a basis for the forfeiture of the automobile seized at the time of his arrest, unless an order is entered herein quashing said arrest warrant and suppressing the evidence obtained by said unlawful searches and seizures.

WHEREFORE, defendant moves and prays (1) that an order be entered not only quashing the arrest warrant but suppressing as evidence all property seized incident thereto; as well as all fruit of this illegality. Next, (2) that all said evidence be excluded at the trial and hearing of this cause, and in any and all related causes. Further, (3) that all of the said property, so unlawfully seized herein, be either restored forthwith to the possession of the defendant, or otherwise disposed of according to law.

JAMES R. WILLIS,
Attorney for Defendant.

BRIEF IN SUPPORT OF MOTION.

It is, of course, the law that, under Rule 4, *Federal Rules Criminal Procedure,* an arrest warrant must set forth facts or information affording a sufficient basis for a finding of probable cause to believe that a crime against the U. S. has been committed (*Hollingsworth v. United States,* 321 F. 2d 342). And, it is likewise a requirement that the complaint, which forms the basis for the issuance of the warrant, must be constitutionally sufficient to enable the commissioner "to determine whether the 'probable cause' to support a warrant exist" (*Giordenello v. United States,* 357 U. S. at 486). Moreover, as was held by this Court, in an opinion by our Chief Judge,

> "The point, then is not merely whether probable cause existed for the issuance of this warrant, but whether [the agent] informed the commissioner of facts sufficient for the commissioner to determine whether probable cause existed." (*United States v. Raidl,* 250 F. Supp. 278 [N. D. Ohio, 1965].)

When these precedents are imposed on the complaint and warrant in this case, it is most clear that they are fatally defective.

First, in the complaint only conclusory allegation that Thomas had violated a precise federal statute is indicated. *Next,* the complaint, in other conclusory language, merely indicates that it is based on information furnished the complainant, "by Cleveland police narcotics detectives, reliable informants of the Federal Narcotics Bureau, and agents of the U. S. Bureau of Narcotics, Chicago, Illinois." So stated it is apparent that the naked allegation of reliability of these informants fail to satisfy the requisites of *Aguilar v. Texas,* 378 U. S. 109 (1964) and *Jones v. United States,* 362 U. S. 257 (1960)—that the magistrate must be informed of some of the underlying circumstances supporting the required conclusions.

Next, the conclusory allegations, set forth therein, fail to satisfy the determination made in *Giordenello,* that

to support the issuance of a warrant the complaint must contain in addition to a statement of the essential facts constituting the offense (Rule 3, *Federal Rules*), a statement of the facts relied on to establish probable cause.

Thus it is as clear here, as it was in *United States v. Brennan*, 251 F. Supp. 99 (N. E. Ohio, 1966), also decided in this Court, that

> "This cursory review of the above cited cases compels the conclusion that the commissioner acted without legal justification in authorizing the arrest. * * *" (*Id.*, at 105.)

If then the warrant was defective—that is, constitutionally infirm—then it follows "every subsequent step in the investigation is permeated with the taint of this illegality, and all evidence must be suppressed" (Ibid).

In this case, that means all the physical evidence seized incident to the actual arrest and all its fruits. Further, we contend that this same principle requires the restoration of the automobile, and either the return or the destruction of all other evidence not sufficiently attenuated to dissipate the taint.

Respectfully yours,

JAMES R. WILLIS,

Attorney for Defendants.

MOTION TO ADVANCE FOR AN IMMEDIATE TRIAL.

(Filed February 12, 1968.)

William Thomas, one of the defendants herein, by and through counsel, hereby moves this court, in writing to grant him a speedy trial herein, within the meaning of the Sixth Amendment of the Constitution.

In support thereof the Defendant avers that since his arraignment he has maintained his plea of not guilty and that, while he has not previously insisted that his cause be speedily determined, and further delay in the ultimate resolution of this case would deny him, to a prejudicial degree, due process.

WHEREFORE, the defendant respectfully moves this court that this cause should be scheduled for an immediate trial.

JAMES R. WILLIS,
Attorney for Defendant.

ORDER FOR DISMISSAL.

(Filed April 3, 1968.)

Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure and by leave of court endorsed hereon the United States Attorney for the Northern District of Ohio hereby dismisses the indictment against William Thomas & Lenora Jackson, defendants.

MERLE M. MCCURDY,
United States Attorney,
By: JAMES L. OAKAR,
Asst. U. S. Attorney.

Leave of court is granted for the filing of the foregoing dismissal.

/s/ THOMAS D. LAMBROS,
United States District Judge.

MOTION TO VACATE ORDER OF DISMISSAL.

(Filed April 8, 1968.)

The Defendant hereby moves the Court to vacate the order of dismissal entered herein on April 3, 1968, notice of which the Defendant received on April 5, 1968. In support thereof the Defendant avers as follows:

1. That he was arrested herein on the basis of a warrant issued by this Court, which warrant substantially charged the crime that is the subject of the indictment in this case.

2. That indictment to the execution of this arrest warrant certain physical property was seized, which property was turned over to the state authorities and became the subject of a state prosecution—i.e., *State v. Thomas,* No. 84450, Cuyahoga County Common Pleas Court. In addition to the above referred to property, the Defendant's car was seized.

3. That based on the Defendant's possession of this property which was discovered and seized incident to the execution of the warrant in this case, the Defendant has been convicted in the state court and is awaiting sentence pending a determination, by this Court, as to validity of the warrant herein, and the resolution of the Government's case.

4. That at the state trial, in which the jury was waived, the decision as to the validity of the warrant was reserved for this Court to make, because the warrant that furnished the basis for the seizure was a federal warrant, and the issue as to its validity not only entailed a consideration of the warrant as written by this issue, to be properly determined involved a consideration of facts showing an illegal search and seizure in Illinois of contraband that had been sent through the mails.

5. That it was understood and stipulated, in the state court, that the state court's decision, on the merits of the state prosecution, would be subject

to the ultimate determination by a federal court as to the validity of the federal warrant issued in this case.

6. That if this case is to be, and can be dismissed, without a ruling on the Defendant's challenge that the warrant was defective, then to that extent the Defendant will be unnecessarily denied due process, for by the simple device denying him the right to show his arrest was illegal, the Government will succeed in effecting a conviction on a silver platter basis.

7. That the Government ought not be allowed to dismiss a case where its purpose is to perpetuate a state conviction based on an illegal federal warrant, and to shield against a valid motion seeking the return of an automobile seized on the basis of illegally acquired evidence.

THEREFORE, the Defendant moves the Court to vacate its order of dismissal and to schedule the motion to suppress and return illegally seized property pending on the date of the Court's dismissal order, for an immediate hearing.

JAMES R. WILLIS,
Attorney for Defendant.

ORDER OVERRULING MOTION TO DISMISS.

(Filed July 2, 1968.)

Upon consideration,

IT IS ORDERED that the motion of the defendant William Thomas to vacate the order of dismissal is hereby overruled.

/s/ THOMAS D. LAMBROS,
United States District Judge.

No. 18,929.

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT.

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

WILLIAM THOMAS, *et al.*,

Defendant-Appellant.

ORDER DISMISSING APPEAL.

(Filed February 18, 1969.)

BEFORE EDWARDS, MCCREE, and COMBS, Circuit Judges.

A panel of this court having been duly appointed pursuant to Rule 3(e) of the Rules of the Sixth Circuit; and appellant's brief having been received and considered; and it appearing to the panel that the appeal from the dismissal of the indictment is frivolous and entirely without merit; upon consideration, it is ORDERED that the appeal be and it hereby is dismissed pursuant to Rule 9 of the Rules of the Sixth Circuit.

Entered by order of the court

CARL W. REUSS,

Clerk.